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FILED
San Francisco County Superior Court

JUN 12 2019

CLERK OF THE COURT

BY: _____

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

11 **DEAN R. GRAFILO, DIRECTOR OF THE**
12 **DEPARTMENT OF CONSUMER**
13 **AFFAIRS, STATE OF CALIFORNIA,**

Plaintiff,

14 v.

15 **KAISER FOUNDATION**
16 **HOSPITALS/THE PERMANENTE**
17 **MEDICAL GROUP**

Respondent,

19 **KIMBERLY KIRCHMEYER,**
20 **EXECUTIVE DIRECTOR, MEDICAL**
21 **BOARD OF CALIFORNIA,**

Real Party in Interest.

Case No. **CPF-19-516699**

**DECLARATION OF SUPERVISING
SPECIAL INVESTIGATOR RASHYA
HENDERSON IN SUPPORT OF
PETITION FOR ORDER TO SHOW
CAUSE AND ORDER COMPELLING
COMPLIANCE WITH
INVESTIGATIONAL SUBPOENA**

Date:

Time:

Dept: 302

Judge: Hon. Ethan P. Schulman

Trial Date: TBA

Action Filed: June 12, 2019

23 I, RASHYA HENDERSON, declare that the following matters are true and correct:

24 1. I am the Supervising Special Investigator in the Complaint Investigation Office,
25 Medical Board of California (Board), which investigates complaints received by the Board and
26 obtains the evidence necessary to determine whether physicians are violating the Medical Practice
27 Act and related laws relating to the practice of medicine.
28

1 2. In 2017, the Board began receiving complaints that school-aged children were
2 obtaining vaccination exemptions based upon medical conditions that did not appear to be valid.

3 3. On May 17, 2018, the Board received an email complaint from the Assistant Chief of
4 Pediatrics at Kaiser, Roseville, reporting that a Kaiser patient was given an inappropriate vaccine
5 exemption letter by Dr. Michael Allen. On May 21, 2018, the complainant faxed a redacted copy
6 of the vaccine exemption letter, which stated that the child was a patient of his and that the child
7 was permanently exempted from all immunizations.

8 4. On February 26, 2019, the complaint and vaccine exemption were reviewed by James
9 Nuovo, M.D., who is a medical consultant to the Board. On March 7, 2019, Dr. Nuovo advised
10 that there was insufficient evidence that Dr. Allen performed a good faith evaluation of the child
11 and that further investigation was necessary to determine whether or not Dr. Allen was violating
12 the laws relating to physicians and vaccine exemptions.

13 5. On March 11, 2019, I served an investigational subpoena on Kaiser Foundation
14 Hospitals (KFH). The subpoena required KFH to provide an unredacted copy of the exemption,
15 as well as information identifying any other Kaiser pediatric patients who received vaccine
16 exemptions from Dr. Allen, and their parents.

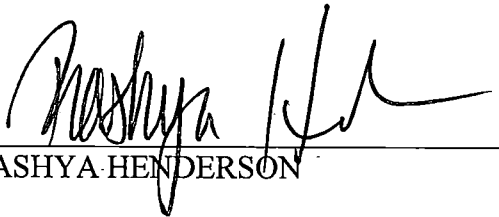
17 6. On March 28, 2019, counsel for KFH and The Permanente Medical Group advised
18 that the subpoenaed information would be provided, if the Board first obtained a court order
19 compelling its release.

20 7. Attached to this declaration are true and correct copies of the following documents:

- 21 A. Complaint dated May 17, 2018 (redacted);
22 B. Vaccine exemption letter, dated May 21, 2018;
23 C. Investigational subpoena, dated March 10, 2019;
24 D. Letter dated March 28, 2019 from attorney Tom Freeman.

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Executed under penalty of perjury on May 17, 2019, at Sacramento, California.


RASHYA HENDERSON

SF2019200636
21450208.docx

Exhibit A

Complaint

Henderson, Rashya@MBC

From: [REDACTED]
Sent: Thursday, May 17, 2018 10:05 AM
To: Henderson, Rashya@MBC
Subject: RE: Vaccine exemption

Hi Rashya,

I hope you are well.

I'm wondering how the cases regarding the vaccine exemptions are going.

I have gotten more names of patients at our clinic who have gotten medically inappropriate vaccine exemptions since we last talked.

One of them is from a doctor we hadn't seen any from before: Michael Allen MD, Center for Living Health, 11344 Coloma Rd, Suite 445, Gold River, CA 95670.

The others are from [REDACTED]

Assistant Chief Pediatrics

Kaiser Permanente
Pediatrics Department
Roseville Medical Center
1840 Sierra Gardens Dr.
Roseville, CA 95661



The best care for
every patient, every time.

From: Henderson, Rashya@MBC [mailto:Rashya.Henderson@mbc.ca.gov]

Sent: Thursday, May 17, 2018 10:32 AM

To: Wendy M. Chry [mailto:Wendy.M.Chry@kp.org]

Sent: To: Wendy M. Chry

Caution: This email came from outside Kaiser Permanente. Do not open attachments or click on links if you do not recognize the sender.

Exhibit B

Exemption

Michael Allen MD FAAP
11344 Coloma Rd., Suite 445
Gold River, CA 95670



office: (916) 803-70
fax: (916) 852-70
patientinfo@centerforlivinghealth.ca
www.CenterForLivingHealth.ca

Name: [REDACTED]
MRN: [REDACTED]
Dept: ROS-PEDA > SIERRA GARD
Prov: ARCA, MELISSA ZARRAGOZA (M.D.)
Appt Date: 5/14/2018 Prov ID: 27604



Holistic, Anthroposophic & Integrative Conventional Pediatrics

April 24, 2018

To Whom It May Concern,

[REDACTED] is a patient of mine. This letter states that [REDACTED] is permanently medically exempt from all immunizations, including but not limited to; DTaP, Tdap, Td, T, Polio, Hepatitis B, Hepatitis A, Hib, Pneumococcal, MMR, HPV, Varicella, Meningococcal, Influenza, and any other immunization deemed necessary, now and/or in the future.

The physical condition of this child, and the medical circumstances related to this child are such, that immunizations constitute a greater risk than benefit for this individual. This is based in part upon her own history of a Vaccine Reaction, Multiple Environmental, and Food Allergies, Eczema, and MTHFR Mutation, and her own Neurologic Vulnerability, as well as her maternal history of Anaphylactic Reactions. This is in addition to a maternal family history of an Autoimmune Disorder, Hypogammaglobulinemia, ADHD, Medication, Food, and Environmental Allergies, Asthma, and Mental Health Disorders. This is further supported by a paternal family history of Multiple Autoimmune Disorders, Asthma, Food, and Environmental Allergies, and Mental Health Disorders.

Please feel free to contact me with any questions.

Respectfully,

Michael Allen MD, FAAP
Board Certified in Pediatrics

Confidentiality Notice To The School
Family Educational Rights and Privacy Act (FERPA), prevents the disclosure of personally identifiable information (PII) in a student's educational record without the consent of a parent or eligible student (aged 18 years or older), unless an exception to the law's general consent requirement applies. A student's health records, including immunization information and other records maintained by a school nurse, are considered part of the student's education record and are protected from disclosure under FERPA to anyone or entity outside the school without parental consent, including this report, unless PII of the child has been redacted.

Exhibit C
Subpoena

BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Investigation of:

Michael Fielding Allen, M.D.

Case Number 800-2018-044591

To: Kaiser Foundation Hospitals

1950 Franklin Street, 17th Floor

Oakland, California 94612

ATTN: Thomas Freeman/Marion's Inn LLP

INVESTIGATIONAL SUBPOENA

DUCES TECUM TO PRODUCE

PAPERS AND DOCUMENTS

Pursuant to the powers conferred upon the Director of the Department of Consumer Affairs (DCA) of the State of California as head of the DCA by Sections 11180 through 11191 of the Government Code of California, which powers have been delegated by the said Director under Section 7 of the Government Code to Staff Services Manager II, Paulette Romero of the Medical Board of California, a health oversight agency.

YOU ARE HEREBY COMMANDED to appear before Supervising Special Investigator (SSI) Rashya Henderson and/or any other duly authorized representative(s) of the Medical Board of California Enforcement Program staff, at **1855 Gateway Boulevard, Suite 320, Concord, California 94520, on the 10th day of April, 2019, at the hour of 9:30 a.m.,** then and there to testify and to answer questions propounded to you in connection with the above titled investigation and to bring with you, and there produce, any and all writings as defined by Evidence Code Section 250, including but not limited to, all the papers, books, accounts, documents and records described in **the attached list**, regardless of the form in which they are kept, and including all electronic or computer forms of records.

1 For purposes of this subpoena, all references to records and documentation include, but are not
2 limited to, production of minutes, notes, electronic communications, audio and video recordings,
3 reports, findings, recommendations or evaluations, taken during any formal or informal conferences,
4 discussions or meetings.

5 For failure to comply with the commands of this subpoena, you will be liable to the
6 proceedings and penalties provided by law.

7 **NOTICE: If you confirm with SSI Henderson that the specific papers and documents**
8 **commanded in this subpoena duces tecum have been, or will be, delivered or otherwise produced**
9 **to SSI Henderson at 2005 Evergreen Street, Suite 1200, Sacramento, California 95815, before**
10 **the time of your appearance, then you DO NOT need to appear. If the records produced are not**
11 **certified, you must personally appear on the date, time and location indicated on the preceding**
12 **page.**

13 If you have any questions, contact SSI Henderson at (916) 263-2563 or
14 Rashya.Henderson@mbc.ca.gov.

15
16 Given under my hand this 1st day of, March 2019.

17
18
19 Fromen
20 Paulette Romero
21 Staff Services Manager II
22 Department of Consumer Affairs
23 Medical Board of California
24 Enforcement Program
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[illegible]

1. Unredacted copy of medical vaccination exemption letters received by KFHK/Kaiser Permanente Roseville Pediatrics from Dr. Allen;
2. Name and date of birth of all children with medical vaccination exemptions from Dr. Allen;
3. Name of parent and/or legal guardian of any and all children with medical vaccination exemption on file with KFHK/Kaiser Permanente Roseville Pediatrics from Dr. Allen;
4. Contact information (to include physical address, telephone number, and, if possible, e-mail address) of parent and/or legal guardian of any and all children with medical vaccination exemption on file with KFHK/Kaiser Permanente Roseville Pediatrics from Dr. Allen.

Exhibit D

Subpoena Response

Marion's Inn LLP

Mark Palley
Thomas M. Freeman
Yvonne M. Pierrou

Latham Square
1611 Telegraph Ave., Suite 707
Oakland, California 94612-2145
www.marionsinn.com

Telephone
(510) 451-6770

Facsimile
(510) 451-1711

Denise Ngo
John A. Newton

March 28, 2019

Rashya Henderson
Supervising Special Investigator
Medical Board of CA
2005 Evergreen Street, Ste. 1200
Sacramento, CA 95815
Rashya.Henderson@mbc.ca.gov

BY MAIL/EMAIL

RE: *Dean R. Grafilo Vs. The Permanente Medical Group*
San Francisco County Superior Court Case No. CPF-18-516346

Dear Ms. Henderson,

I am attaching the response from The Permanente Medical Group, Inc. to the investigational subpoena recently served on D [redacted] of the Permanente Medical Group, Inc.

Our client is prepared to provide the names of its patients, as requested in the subpoena, if ordered to do so by a court and our client is prepared to stipulate to the issuance of such an order. Accordingly, please see the Response from TPMG to the SDT, and a draft stipulation and draft order for your consideration. Please feel free to call me if you have any questions. Thank you

Sincerely,


Tom Freeman